

REMARKS/ARGUMENTS

Reconsideration is requested.

In the Office Action, the Examiner noted that claims 1-22 are pending in the application; and that claims 1-22 are rejected. By this amendment, claim 4 has been cancelled and claims 1, 5, 10, 16 and 21 have been amended. Thus, claims 1-22 remain pending in this application.

Claims 1-9 and 16-22 stand rejected under 35 U.S.C. §102(e) as being anticipated by *Cuzzo, et al.* (U.S. Patent No. 6,052,547). Claims 10-15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of *Davidson, Jr., et al.* (U.S. Patent No. 6,025,925) and *Maniwa* (U.S. Patent No. 5,933,584).

The present Office Action has been improperly made FINAL. In response to Applicant's arguments filed on September 26, 2003, the present Office Action (dated December 30, 2003) was issued rejecting claims 1-9, 16-22 with new ground(s) of rejection using the previously cited *Cuzzo* (U.S. Patent No. 6,052,547) reference. See page 10 of the 12/30/03 Office Action. The finality of the present Office Action was not necessitated by Applicants' amendment.

Under MPEP 706.07(a), which recites,

"Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p)." (Emphasis Added)

In the present Office Action, claims 1-9, 16-22 have been rejected with new grounds of rejection using the *Cuzzo* reference. See page 10 of the present Office Action. Applicants' amendments presented in the September 26, 2003 response did not necessitate the present Office Action to be made Final. Further, the *Cuzzo* reference was not submitted by the Applicants in an Information Disclosure Statement with a fee under 37 CFR 1.97(c). The *Cuzzo* reference was cited by the Examiner. See PTO Form-892 attached to January 10, 2003 Office Action. Accordingly, the present Office Action has been improperly made FINAL. Withdrawal of the finality of the present Office Action

is requested to afford the Applicants an opportunity to respond to the newly issued grounds of rejection.

Amended claim 1 recites, in part, a tracking apparatus configured to implement hybrid pull-push data gathering of transaction details from the image forming device including consumable usage information. Further details regarding this feature are disclosed on page 14, lines 17-24 of the present specification.

Anticipation of a claim under §102 can be found only if the prior art reference discloses every element of the claim..." *In re King*, 801 F. 2d 1324, 1326, 231 USPQ 81, 90 (1985). Thus, to "anticipate a claim, a prior art reference must show each and every element claimed." *Leinoff v. Louis Milona & Sons, Inc.*, 726 F. 2d 734, 738, 220 USPQ 845, 848 (Fed. Cir. 1984).

Page 3, first paragraph, of the January 10, 2003 Office Action acknowledges that Cuzzo "does not explicitly teach a memory 34 for storing a data file containing the user information." Therefore, for at least this reason alone, Cuzzo cannot anticipate claim 1.

In addition, Cuzzo fails to teach or suggest a tracking apparatus configured to implement hybrid pull-push data gathering of transaction details from the image forming device including consumable usage information as recited in claim 1. The Office Action asserts that Cuzzo's reference numeral 34 shown in Figure 1 teaches such a feature. Applicants respectfully disagree.

Cuzzo's memory 34 (RAM) provides storage for a number of measurement values and parameters that are utilized during the operation of page/toner metering procedure 32. RAM 34 includes values for parameters identified using reference numerals 36-49. See Cuzzo's col. 2, line 56 to col. 3, line 40. The click value rolling sum 49 (and other values) are periodically written to disk drive 26 for later access by page/toner meter procedure. See Cuzzo's col. 3, lines 42-45. Periodically writing rolling sum 49 to the disk drive 26 is a single technique. Therefore, it cannot be a hybrid data gathering technique.

In addition to writing rolling sum 49 to the disk drive 49, where does Cuzzo teach a second technique for gathering of transaction details including consumable usage information from an image forming device? Cuzzo discloses that the click value rolling sum 49 (and other values) is periodically written to disk drive 49 and nothing more. It fails to teach or suggest a tracking apparatus

configured to implement hybrid pull-push data gathering of transaction details from the image forming device including consumable usage information as recited in amended claim 1.

In view of the above, since Cuzzo fails to identically describe every single element of claim 1, it cannot anticipate claim 1. Claim 1 is therefore allowable over Cuzzo.

As claims 2-3, and 5-9 depend from claim 1, they too are allowable.

For example, claim 5 further recites a plurality of image forming devices, and the tracking apparatus being configured to poll the plurality of image forming devices to collect the transaction details at each of the image forming devices, and wherein at least one of the image forming devices is configured to push the transaction details to the tracking apparatus that is not polled prior to a memory overflow event occurring on the at least one image forming device.

The Office Action in rejecting the above-recited claim 5 asserts that "it would inherently be for the user to keep track the detail of the status of his print job from either at (the) computer or at the printer."

MPEP §2131, which recites, in part, that:

To anticipate a claim, the reference must teach every element of the claim. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Cuzzo's col. 3, lines 38-40 and col. 4, lines 35-37 merely disclose "rolling click sum 49 is then equated, by page/toner metering procedure 32, to a cents value per output page which is to be charged to the customer." There is no explicit or inherent teaching or suggestion to use a hybrid pull-push data gathering of transaction details from the image forming device, and polling of the image forming devices as recited in claim 5. Furthermore, an electronic search of Cuzzo reference did not produce even a single reference to the word "poll" or "polling".

In view of the above, Cuzzo neither explicitly nor inherently discloses a tracking apparatus being configured to poll the plurality of image forming devices to collect the transaction details at each of the image forming devices, and wherein at least one of the image forming devices is configured to push the transaction details to the tracking apparatus that is not polled prior to a memory overflow event occurring on the at least one image forming device as recited in claim 5.

In view of the above, claim 5 is not anticipated and therefore allowable over Cuzzo.

Claims 16, 21, and 22 are allowable at least for reasons set forth above with regard to claim 1 in addition to their independently recited features.

As claims 17-20 depend from claim 16, they too are allowable. Claim 10 recites a hard copy output device usable with a local area network (LAN) and a client computer, comprising processing circuitry communicating with the hard copy output device and operative to receive LAN data packets from the client computer over the LAN that identify a user and a print job, and memory coupled with the processing circuitry and operative to store a data file containing the LAN data packets and consumable usage information including actual toner usage, and a tracking apparatus configured to implement hybrid pull-push data gathering of transaction details including consumable usage information from the hard copy output device, the LAN includes a plurality of hard copy output devices, and the tracking apparatus being configured to poll the plurality of hard copy output devices to collection the transaction details at each of the hard copy output devices, and wherein at least one of the hard copy output devices is configured to push the transaction details to the tracking apparatus that is not polled prior to a memory overflow event occurring on the at least one hard copy output device. (Emphasis Added).

As acknowledged by the Office Action, Davidson fails to teach or suggest that actual toner usage is contained in a data file. In addition, Davidson, fails to teach or suggest a tracking apparatus configured to implement hybrid pull-push data gathering of transaction details including consumable usage information from the hard copy output device as recited in amended claim 10. Davidson further fails to teach or suggest that "the LAN includes a plurality of hard copy

output devices, and the tracking apparatus being configured to poll the plurality of hard copy output devices to collection the transaction details at each of the hard copy output devices, and wherein at least one of the hard copy output devices is configured to push the transaction details to the tracking apparatus that is not polled prior to a memory overflow event occurring on the at least one hard copy output device" as recited in amended claim 10.

In view of the above, even if Davidson is combined with Maniwa, all the elements of claim 10 are not met. Claim 10 is therefore in condition for allowance.

As claims 11-15 depend from claim 10, they too are in condition for allowance. A notice to that effect is respectfully urged.

CONCLUSION

For all the reasons advanced above, Applicant respectfully submits that the application is in condition for allowance, and action to that end is respectfully requested. If the Examiner's next anticipated action is to be anything other than a Notice of Allowance, the undersigned respectfully requests a telephone interview before issuance of any such subsequent action.

Respectfully submitted,

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